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June 11, 2013

## **VIA FEDEX**

Mr. Gary Shinners Executive Secretary National Labor Relations Board 1099 14<sup>th</sup> Street, NW Washington, D.C. 20570-0001

Re: Silgan Plastics Corporation

Case Nos.: 25-CA-031870, et al.

Dear Mr. Shinners:

Pursuant to the Board's supplemental order in <u>Reliant Energy</u>, 339 NLRB 66 (2003), Silgan Plastics Corporation ("Respondent") submits this letter to bring to the Board's attention significant authority issued after Respondent submitted its Statement of Exceptions and Brief in Support of Exceptions ("Brief").<sup>1</sup>

On May 3, 2013, the Board issued the decision in National Gypsum Co., 359 NLRB No. 116, 2013 WL 1873273 (May 3, 2013). The Board found that the parties, National Gypsum and USW, the same Union as in the instant case, reached an impasse. The Board found an impasse because: 1) the employer rejected the Union's proposal and gave no indication that it would change its position; and 2) despite the Union's contention that it continued to be willing to bargain, Union negotiator, Chris Bolte, also the Union negotiator in the instant case, made it clear that the Union would not change its position. <u>Id.</u> at \*1-2. Respondent contends that the same analysis must be applied to Section C, at 32-39, of Respondent's Brief.

Respondent does not waive its position as stated in its <u>Reliant Energy</u> letter dated February 8, 2013, in which it stated that based on the holding in <u>Noel Canning v. NLRB</u>, 705 F.3d 490 (D.C. Cir. 2013), the Board has an invalid quorum and lacks the power to issue a decision until a valid quorum is reached.

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Respondent also refers the Board to the ALJ's statement of the case and analysis of the parties' bargaining efforts to show that Bolte's dilatory conduct during the negotiations was a tactic he used to delay bargaining and attempt to avoid an impasse. <u>Id.</u> at \*4-29. The ALJ's findings should be applied to the entire Brief.

Respondent also refers the Board to the ALJ's finding that the employer violated the Act because it failed to continue the dynamic status quo with respect to the health insurance premiums. <u>Id.</u> at \*4-11. As in <u>National Gypsum</u>, the Board must find that the Respondent had to maintain the dynamic status quo and that in this case, it complied with its obligation. The ALJ's analysis applies to Section B of the Brief, at 20-25.

The Board's and ALJ's decision in <u>National Gypsum</u> should be considered when reviewing ALJ Bogas' findings in the instant case.

Sincerely,

Raymond M. Deeny

RMD/KES/mam

cc: Kimberly Sorg-Graves, Esq. (via FedEx) Richard J. Swanson, Esq. (via FedEx)

Robert A. Hicks, Esq. (via FedEx)

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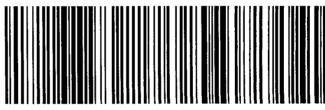
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